

Court of Appeals, State of Michigan

ORDER

People of MI v Donald Willie Williams

Docket No. 341703

LC No. 1993-001791-FC

Jonathan Tukel
Presiding Judge

Mark J. Cavanagh

Elizabeth L. Gleicher
Judges

The Court orders that the delayed application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).

Gleicher, J., (*concurring*). I fully concur in this grant of defendant's application for leave to appeal, as it presents an issue worthy of plenary review. At age 16, defendant was sentenced to life without parole for his role as a lookout and getaway driver in a carjacking resulting in murder. He seeks re-sentencing pursuant to *Montgomery v Louisiana*, 138 S Ct 718 (2016). The Macomb County prosecutor contends that defendant should be re-sentenced to life without parole.

Defendant sought funds in the circuit court to retain expert witnesses to testify regarding the mitigation factors identified in *Miller v Alabama*, 567 US 460 (2012), including defendant's social and psychological histories before and during his incarceration, and the prospects for his future if eventually permitted to leave prison. The amount proposed by defendant's counsel for expert services was \$42,650, and was based on an affidavit detailing the costs, hours, and fees required to present defendant's mitigation claim.

The circuit court approved \$2,500. Given defendant's detailed showing of the fees necessary to address the Miller factors and to effectively counter the prosecution's arguments, it appears that \$2,500 is woefully inadequate. This Court will now consider the parameters that should apply to such fee requests. The hearings for juvenile offenders seeking parole sentences involve complicated legal and factual issues and, potentially, volumes of legal, psychological, educational, vocational, and disciplinary information. The defendant and his counsel likely lack the skills and training to adequately evaluate and analyze this evidence. A meaningful hearing depends on meaningful input from experts. While \$42,650 represents a considerable sum, it may be closer to being realistic than the \$2,500 approved. The trial court offered no explanation whatsoever for selecting that number, which suggests arbitrariness and an absence of exercised discretion. A case call panel will now have an opportunity to thoughtfully and comprehensively address defendant's fee request, an issue that is also likely to arise in other cases.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 04 2018

Date


Chief Clerk